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VIA E-MAIL AND HAND DELIVERY

Federal Election Commission
Office of General Counsel
999 E Street, NW
Washington, DC 20463

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FEDERAL ELECTION COMMISSION

Re: MUR 7134 - Newt 2012, Inc.

To Whom It May Concern:

Please accept the following response filed on behalf of Newt 2012, Inc. (hereinafter "Newt 2012") with respect to the complaint filed on September 7, 2016 by Mr. Mel Stevens, Jr. of Altamonte Springs, Florida (MUR 7134, the "Complaint"). As discussed in greater detail within the contents of this correspondence, the Complaint authored by Mr. Stevens against Newt 2012 has no basis in either law or fact. More importantly, however, the Complaint filed by Mr. Stevens fails to allege that Newt 2012 committed any potential violation of the Federal Election Campaign Act of 1971 (the "Act") or its associated rules and regulations. In turn, the complainant has failed to state a claim upon which relief can be granted by the Federal Election Commission (hereinafter "FEC" or the "Commission"), and in turn, MUR 7134 should be summarily dismissed without further review or investigation.

I. Introduction & Summary of Facts

Relying on erroneous facts and an incorrect understanding of the role of the FEC and the purpose of its investigative and enforcement powers, Mr. Stevens filed the present Complaint with the Commission on behalf of Security Financial Enterprises, Inc. (hereinafter "SFE"), which provided office space to Newt 2012 for phone-banking activities in association with the 2012 presidential campaign. Although the Complaint itself does not specifically allege that Newt 2012 violated the Act in any way, shape or form, Complainant does ask for the FEC to intervene on SFE's behalf to "correct[] the inaccurate amount of debt ... reported to the FEC to reflect the true and correct amount owed" and to ensure that the company is "paid IN FULL." (See Complaint, pg. 2). Such requests, as discussed in greater detail below, do not relate to the enforcement of federal campaign finance law and are not within the purview or jurisdiction of the Commission. As such, there is no foundation upon which to initiate an investigation of

Respondent in this matter, nor is there any reason to conclude that the Act or any other laws or regulations have been violated.

While the Complaint's failure to state a claim upon which relief can be granted by the FEC fully undermines its validity and ability to be reviewed through the Commission's investigative and enforcement processes, it is just as important to note that the Complainant's allegations are likewise false and wholly without merit. While it is true that Newt 2012 engaged SFE during the 2012 election cycle to provide office space in conjunction with political phone-banking efforts the campaign was conducting to promote former Speaker of the House Newt Gingrich as the Republican nominee for President, the amount of unpaid obligations still owed to SFE by the Complainant is NOT the \$3,815.55 specified by Mr. Stevens in the Complaint. (See Complaint, pg. 2). To the contrary, the unpaid debt still owed to SFE by the Respondent in conjunction with the previously-rented office space is the \$1,830.45 amount reflected in Newt 2012's preliminary Form 8 Debt Settlement Plan ("DSP") filed with the Commission on August 1, 2016. This same debt amount is also reflected in Newt 2012's recently-filed quarterly campaign disclosure report submitted to the FEC on October 15, 2016, as well as in all previous committee disclosure reports filed with the Commission since Respondent's last payment to SFE on September 12, 2014.

The \$1,830.45 amount detailed in the described FEC disclosures represents the full, accurate and proper amount still owed to SFE based upon the services rendered in the March 1, 2012 invoice to Newt 2012. (See Complaint, Exhibit A). The contents of the Complaint wrongly assert that the \$4,530.45 amount listed on the described invoice was reduced by only \$2,100 in payments between the time of invoice and the time of the Complaint. As will be described in greater detail later in this response, that claim is wholly false and inaccurate. Equally erroneous is the assertion by Mr. Stevens in the Complaint that Newt 2012 owes SFE and additional \$1,385.10 in late fee penalties for delinquent rent payments. The potential assessment of such penalties was not authorized between the parties by and through their contractual arrangement, and such fees are not properly applied in conjunction with the present debt obligation. Given these facts, the proper outstanding debt remains the \$1,830.45 amount listed in Newt 2012's various FEC disclosures.

In light of the above facts and as demonstrated fully below, the contents of the present Complaint thus represent nothing more than a misdirected attempt by Mr. Stevens to burden the FEC with what is a run-of-the mill payment dispute between a campaign committee and outside vendor. It is not the Commission's role, nor is it within its jurisdiction, to referee such business disputes within the confines of its investigative and enforcement processes. Allegations that only tangentially touch on federal campaign finance issues and that do not implicate any potential violations of the Act simply do not warrant substantive consideration by the FEC. In this matter, Newt 2012 has taken all relevant and appropriate measures to properly disclose what it believed to be an undisputed debt obligation to SFE, and has, in turn, fully met its compliance obligations under federal campaign finance law. Given this fact and the fact that Newt 2012 is more than

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willing to amend its DSP to reflect the new revelation that SFE now considers the long-standing \$1830.45 debt to be disputed rather than undisputed, there is truly no justification for any further Commission review. As such, Newt 2012 respectfully requests that the FEC immediately dismiss the present matter for failure to state a claim upon which relief can be granted. Likewise, Respondent concurrently asks that the Commission admonish the Complainant for wrongfully attempting to leverage the FEC's enforcement process to settle what is otherwise a standard business and contractual dispute between organizations.

II. Argument

A. Complainant Has Not Alleged a Potential Violation of the Act or Its Associated Rules and Regulations That Is Within the Jurisdiction of the Commission

Under the Act and its associated rules and regulations, any person who believes a violation of federal election campaign laws or Commission regulations has occurred or is about to occur may file a complaint in writing with the FEC's Office of General Counsel. In order for such a complaint submission to be accepted as valid by the Commission, a prospective complainant must comply with certain requirements imposed by statute (2 U.S.C. §437(g)(a)(1)) and regulation (11 CFR §111.4(a)-(d)). Specifically, any complaint filed with the Commission must meet the following standards:

- The complaint provides the full name and address of the complainant;
- The complaint must be signed, sworn to and notarized;
- The complaint must clearly recite the facts that describe a violation of a statute or regulation under the Commission's jurisdiction;
- The complaint must clearly identify each person, committee or group that is alleged to have committed a violation of such statute or regulation under the Commission's jurisdiction;
- The complaint must include any documentation supporting the alleged violations of statute or regulation under the Commission's jurisdiction, if available; and
- The complaint must differentiate between statements based on the complainant's personal knowledge and those based on information and belief.

Complaints that fail to meet each of these specified elements are deemed to be deficient under 11 CFR 111.5(b) and are to be dismissed without further action by the Commission.

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As set forth in several of the aforementioned statutory and regulatory elements, the key component of a viable complaint before the FEC is a grievance that articulates clear allegations of a suspected violation of a statute or regulation under the jurisdiction of the Commission. Such statutes and regulations include the following: the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. §431 *et seq.*; the Presidential Election Campaign Fund Act, 26 U.S.C. §9001 *et seq.*; the Presidential Primary Matching Payment Account Act, 26 U.S.C. §9031 *et seq.*; and Title 11 of the Code of Federal Regulations. The FEC is also tasked with jurisdiction over the financing of campaigns for the U.S. House of Representatives, the U.S. Senate, the Presidency and the Vice Presidency. Any complaints that fall short of alleging a violation of these specific laws or regulations do not meet the requirements of 2 U.S.C. §437(g)(a)(1) and 11 CFR §111.4(a)-(d), and must be dismissed for failure to state a claim upon which relief can be granted by the Commission.

In the present matter, it is abundantly clear that Mr. Stevens has fallen short of meeting his obligations under 2 U.S.C. §437(g)(a)(1) and 11 CFR §111.4(a)-(d) and has failed to present the Commission with a complaint that specifies actual or potential violations of federal campaign finance statutes or regulations within the purview of the FEC. The Complaint itself makes absolutely no reference to any statutory or regulatory provisions that may have been violated by Newt 2012 or its staff, contains no allegations that Respondent or its staff undertook any actions that may have violated federal campaign finance requirements, and likewise provides no evidence insinuating that Newt 2012 or its staff may have engaged in any behavior whatsoever in contravention of applicable law. At best, the Complaint is nothing more than an ill-advised attempt to involve the Commission in the resolution of outstanding commercial interactions between Newt 2012 and SFE. More likely, however, it is a calculated maneuver on the part of SFE and the Complainant to punish the Respondent and its staff for having insufficient campaign funds to pay the obligations delineated in its initially-filed DSP.

Catering to either of the above motivations is certainly not the responsibility or role of the FEC, nor is it a proper use of the investigative and enforcement resources of the Commission. Although the FEC is tasked by federal statute with oversight authority over authorized campaign committees and their adherence to the obligations of federal campaign finance law and regulations, it has never been and never will be the role of the Commission to interject itself into legitimate business disputes between campaign committees and vendors that are unrelated to the Act and its implementation. In the instant matter, disputes over the amount of past payments by Newt 2012 to SFE and any outstanding obligations still owed by the Respondent are solely commercial quarrels as between the parties. Disagreement over the amount of past payment by Newt 2012, the assessment of interest penalties for late payments by SFE, and the speed of recompense for outstanding obligations are business and contractual disputes that do not implicate federal campaign finance law except to the extent of disclosure on campaign committee reports.

of such space was set at \$4,530.45 - an amount not in dispute as between the parties. Since the time the parties entered into the contractual arrangement and the campaign was first invoiced for the described office space, Newt 2012 has made a total of eleven separate payments to SFE in conjunction with this obligation. Those payments were made as follows: September 10, 2012 (\$500.00); October 15, 2012 (\$250.00); November 9, 2012 (\$250.00); December 7, 2012 (\$250.00); February 8, 2013 (\$100.00); March 29, 2013 (\$250.00); May 10, 2013 (\$100.00); June 19, 2013 (\$200.00); July 23, 2013 (\$200.00); September 16, 2013 (\$100.00); and September 12, 2014 (\$500.00). In total, such transfers add up to \$2,700.00 in payments to SFE between September 2012 and September 2014.

Based upon this data, the appropriate debt obligation owed to SFE by Newt 2012 in conjunction with the original \$4,530.45 invoice is the \$1,830.45 number listed by Respondent in its FEC Form 8 DSP and most recent FEC campaign finance disclosure. Respondent has consistently reflected this amount as the outstanding debt obligation it owes to SFE on all FEC disclosure reports filed since September 12, 2014. Only now, after over two years of public reporting of this specific amount as the undisputed debt figure, is SFE seeking to dispute the proper amount owed by Newt 2012. Specifically, SFE is asserting that the actual debt obligation owed by Respondent is \$3,815.55 rather than the proper amount of \$1,830.45. The purported justifications for this inflation of the outstanding debt, however, are all misguided and improper.

As noted above and described in the contents of the Complaint, Mr. Stevens and SFE now assert that they have the right and the ability to assess late fee penalties against Newt 2012 for its delay in paying the full amount of \$4,530.45 owed. Such penalty assessments make up \$1,385.10 of the \$1,985.10 debt inflation, and are wholly inappropriate. Nothing in the arrangement entered into by SFE and Newt 2012 in December 2011 granted Mr. Stevens' company the ability to assess late fee penalties against Respondent. As such, SFE has no contractual or common law right to assess penalties *sua sponte* against Newt 2012 because of delay in payment. Mere frustration over the financial status of campaign clients is not sufficient grounds for a vendor to assess penalties not agreed upon in contract, nor is it sufficient justification for filing a complaint with the FEC. The truth of the matter in the instant case is that SFE is presently frustrated by Respondent's inability to pay its remaining debt and is lashing out by inappropriately increasing the amount of the obligation and misappropriating the resources of the Commission. Neither action is proper, and the FEC should certainly not reward SFE for its incorrect behavior by further investigating or entertaining the "allegations" contained in the present Complaint.

The remaining portion of the inflated debt number highlighted by SFE in the Complaint - an amount of \$600 - has a slightly less controversial cause. Specifically, this \$600 of wrongfully attributed debt appears to stem solely from accounting errors made by the Complainant. First and foremost, SFE appears to be ignoring a \$500.00 payment made by Newt 2012 on September 12, 2014 towards the outstanding invoice. Despite clear records to the contrary, Mr. Stevens contends in his Complaint that Newt 2012's last payment to SFE was a \$100.00 payment made

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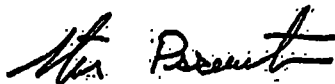
on September 16, 2013. Such an assertion by Mr. Stevens ignores the successful payment made by Respondent in 2014 and unnecessarily inflates the debt number still owed. The other \$100.00 of the described debt inflation is also the result of payment non-allocation by SFE - this time with regard to the \$100.00 payment made on September 16, 2013. As can be seen from looking at Complaint Exhibit C provided to the Commission by Mr. Stevens, SFE is acknowledging receipt of a \$100.00 payment from Newt 2012 in September 2013, but the company is not actually crediting it against the \$2,430.45 balance detailed on the account. As the Commission can see, the \$100.00 check is noted on the document as received, but the balance is not appropriately decreased from \$2,430.45 to \$2,330.45. This is likely a basic accounting oversight on the part of SFE, but it is nevertheless also indicative of the overall weakness of the factual assertions contained in the present Complaint.

The simple fact remains that the full debt owed to SFE by Newt 2012 has remained the same for over two years, and has been properly reported to the FEC and the public by Respondent in accordance with the actual financial obligations it incurred in 2011 and 2012. In turn, it is altogether inappropriate for the Complainant to misstate the actual value of the debt in order to manufacture a complaint against Respondent before the FEC. Such behavior on the part of the Complainant is not only a violation of the contractual arrangement between Newt 2012 and SFE, but it is likewise a blatant attempt to hijack the Commission's investigative and enforcement processes to gain leverage in a business dispute that is wholly unrelated to campaign finance law.

III. Conclusion

As the information contained within this response clearly sets forth, Newt 2012 has done nothing to run afoul of the legal requirements of the Act, Commission regulations, or relevant FEC advisory opinions. Likewise, the allegations levied by the Complainant in this matter set forth no justifiable reason for the Commission to believe a violation of federal campaign finance law has occurred. Given these facts, it is clear that the Complaint at issue fails to state a claim upon which relief can be granted by the FEC and should be summarily dismissed without further investigation and review.

Respectfully submitted,



Stefan C. Passantino

Designated Counsel for Newt 2012, Inc.